

MINUTES
KENTUCKY BOARD OF PHARMACY
Spindletop Administration Building, Suite 302
2624 Research Park Dr.
Lexington, Kentucky

January 14, 2009

CALL TO ORDER: A regular meeting of the Kentucky Board of Pharmacy was held at the Board Office at Spindletop Administration Building, 2624 Research Park Drive, Lexington, Kentucky. President Shely called the meeting to order at 9:10 a.m.

Members present: Catherine Shely, Larry Hadley, Mike Leake, Anne Policastri, Sandy Simpson, and Joel Thornbury. Staff: Michael Burleson, Executive Director; Katie Busroe, Steve Hart and Phil Losch, Pharmacy and Drug Inspectors; Lisa Atha, Executive Secretary; Cheryl Lalonde, Assistant Attorney General and Board Counsel; and Brian Fingerson, Pharmacist Recovery Network Committee. Guests: Ralph Bouvette and Sam Lyons, APSC; Brad Hall and Richard Slone, Kentucky Pharmacists Association; Kim Morgan, Target; Scott Greenwell, Humana; Chris Killmeier, Walgreens; Trish Freeman and Melinda Joyce, Board of Pharmacy Advisory Council; Rebecca Rabbitt, Institute for the Certification of Pharmacy Technicians; Pete Orzali; Sally Droste; Diana Clarkson; and Lauren Abell, Courtney Mills, Jason Underwood, Adam Oliver, and Jennifer Bach, Pharmacy Students. Melody Curtis, Court Reporter, recorded the meeting.

MINUTES: On motion by Dr. Policastri, seconded by Mr. Thornbury and passed unanimously, the Minutes of December 17, 2008 Board Meeting were approved as amended.

APPEARANCE: **Diana Clarkson.** Ms. Clarkson was sworn in by Melody Curtis, Court Reporter. Ms. Clarkson appeared before the Board asking for reinstatement of her Kentucky pharmacist's license. Ms. Clarkson gave a brief overview of the events that lead to the loss of her license. After discussion, Dr. Policastri moved to reinstate Ms. Clarkson's Kentucky pharmacist's license with the stipulations as follows: 5 years probation; shall maintain a perpetual inventory at all places of employment for Schedule II drugs, with electronic tracking of Schedule III-V drugs and expired controlled substances, perpetual inventory shall be made available to the Board upon request and audits may be conducted; shall attend AA/NA meetings no less than 6 times per 2 week period or 12 meetings per calendar month, which shall include a minimum of 2 meetings per week; Board shall conduct quarterly inspections for two years after which time semi-annual inspections shall be conducted for 3 years at all locations of employment or practice as a pharmacist, the cost of which not to exceed \$500 per inspection, shall be paid to the Board within 30 days of invoicing; continuing education requirements must be satisfied, renewal fees and any penalties must be paid, and a complete renewal application must be submitted; maximum hours of work: 45 hours/week or 90 hours/2 weeks, with a maximum of 50 hours in any 7 consecutive days and no overtime; shall

provide a copy of this Agreed Order to all employers and pharmacists-in-charge; shall sign an aftercare contract, to include drug counselor if indicated, with the Pharmacist Recovery Network Committee (PRNC) for the length of the Agreed Order; any violation of this Agreed Order or PRN contract shall be reported to the Board and PRNC Chair within 24 hours of violation; shall notify Board of change of home address, telephone number, and/or email within 7 days of change; shall provide to the Board and PRNC a signed release granting the Board and PRNC access to all written medical records and conversations regarding medical care; shall provide the Board and PRNC with written monthly reports of all AA/NA meetings; shall agree to provide observed urine, other body fluid, or hair samples for drug/alcohol screens at the direction of PRNC, the Board or any other monitoring body; provide copies of any results of any screens ordered to the Board and PRNC; provide notification to PRNC Chair, Board and testing company of anything that may affect pharmacist's availability for screens prior to event, a missed screen shall be cause for reporting such to the Board, any positive screen that is a violation of the Agreed Order or PRN contract shall be communicated to the Board by the PRNC Chair within 24 hours, a report indicating a presumptive presence shall constitute a conclusive basis, without the necessity of a hearing, for a determination that pharmacist is not in compliance with the terms of this Agreed Order of Reinstatement; shall agree to abstain from any and all mood-altering chemicals, except as prescribed by pharmacist's physician and only after consultation with PRNC Chair; shall notify PRNC Chair in advance if any mood-altering and/or potentially addictive medications are required or recommended by pharmacist's physician; shall provide documentation to PRNC Chair of the need for the medication within 3 days; shall renew verification with PRNC Chair every 90 days if need for medication is ongoing; shall give up the right to self medicate with the exception of single entity OTC NSAIDS and acetaminophen; shall be excluded from accepting a position of pharmacist-in-charge, power of attorney, or preceptor; shall advise Board at all times of place of employment and shall only practice at a location with a work schedule that has received prior approval of the Board or its President; shall obtain all prescriptions and those of family at a pharmacy designated in writing to the Board; prescriptions shall not be filled by a family member or at any family owned pharmacy and shall not dispense any drugs for self or family; shall attend within 1 year of entry of this Agreed Order either the University of Utah School on Alcoholism and other Drug Dependencies, CAPTASA, or SE PRN meeting and shall provide a certificate of completion; shall provide monthly written self performance evaluations to the Board and PRNC Chair and shall make all appearances before the PRNC as requested, including an annual appearance closest to the anniversary date of reinstatement; committing any act that results in violation of federal or state pharmacy or drug statute or regulation, may result in an emergency suspension of pharmacist's license, require an appearance before the Board, or result in a complaint against pharmacist's license with the Board imposing any applicable penalties; shall not seek to amend or modify this Agreed Order. Above information shall be reported to NABP and is subject to disclosure under the Kentucky Open Records Act. Mr. Hadley seconded, and the motion passed unanimously.

Ms. Lalonde suggested that the future work plans of the pharmacist asking for reinstatement be standard information that is included in the pharmacist's packet provided to the Board and the PRNC.

UPS Supply Chain Solutions, Inc./Paul Addison/Pete Vowels. Paul Addison, Director of Healthcare Compliance and Pete Vowels, pharmacist-in-charge for UPS Supply Chain Solutions, Inc. were sworn in by Melody Curtis, Court Reporter. Mr. Addison requested the Board consider the promulgation of a new regulation specific to pharmacies exclusively dispensing prescription medical devices with no legend drugs. After discussion, Mr. Leake moved to deny the request. Ms. Simpson seconded and the motion passed 3 to 2 with Mr. Leake, Dr. Policasti and Ms. Simpson voting in favor of the motion and Mr. Hadley and Mr. Thornbury voting against the motion. Mr. Addison invited the Board members to visit UPS Supply Chain Solutions, Inc.

Institute for the Certification of Pharmacy Technicians/Rebecca Rabbitt. Rebecca Rabbitt, Chief Executive Officer of Institute for the Certification of Pharmacy Technicians (ICPT) was sworn in by Melody Curtis, Court Reporter. Dr. Rabbitt requested that the Board approve ExCPT, sponsored by ICPT, as an alternative exam for certifying pharmacy technicians in Kentucky and include ExCPT in 201 KAR 2:045 Section 1 along with the National Certification Examination administered by the Pharmacy Technician Certification Board. Mr. Thornbury moved to change 201 KAR 2:045 adding ExCPT as an acceptable certification exam for technicians in Kentucky. Mr. Burleson is to file the regulation on or before February 15, 2009 with a public hearing date of March 26, 2009, at 9:00 a.m. at the Board Office. Mr. Hadley seconded, and the motion passed unanimously.

After Dr. Rabbitt's left the meeting, it was brought to the attention of the Executive Director that Dr. Rabbitt did not answer all questions asked of her honestly. Ms. Lalonde, Board Counsel, had asked Dr. Rabbitt if recognition of ExCPT as an exam for certifying pharmacy technicians had been denied in any state. Dr. Rabbitt answered that ExCPT had not been denied in any state. However, in November 2008, the Arizona Board of Pharmacy did deny ExCPT recognition as an exam for certifying pharmacy technicians. Mr. Leake moved to reconsider the motion to change 201 KAR 2:045 to include ExCPT as an alternative exam for certifying pharmacy technicians in Kentucky based on this new information. Mr. Hadley seconded, and the motion passed unanimously. Mr. Thornbury moved to table the request of accepting ExCPT as an alternative exam for certifying technicians in Kentucky and including ExCPT in 201 KAR 2:045 Section 1. Mr. Leake seconded, and the motion passed unanimously. It was requested that the Court Reporter provide a transcript of Dr. Rabbitt's testimony while under oath.

INTERAGENCY:

KPhA/Brad Hall. Brad Hall, Executive Director of KPhA, appeared before the Board requesting that the Board partner with KPhA, Kentucky State Police (KSP) and Drug Enforcement and Professional Practices Branch of the Inspector General in a program to dispose of controlled substances from long term care facilities. Mr. Hall requested a

grant of up to \$40,000 from the Board of Pharmacy to be used to purchase two incinerators, one to be in western Kentucky and one in central Kentucky at KSP posts. After discussion, Mr. Thornbury moved that the Board is willing to approve up to \$40,000 from the Board's Federal funds for the purchase of incinerators for this program, provided that it is allowable for the Federal funds to be used in this manner and that Mr. Burleson and Ms. Lalonde will work with KPhA and KSP to develop a Memorandum of Understanding that the Board will not be held responsible for any environmental issues in regards to the state and federal EPA and that this program will be self-funded once the incinerators are purchased. Mr. Leake seconded, and the motion passed unanimously.

BOARD REPORTS:

Board President. President Shely recognized Dean Kenneth Roberts for his service on the Advisory Council from 2005 to 2008.

President Shely and Mr. Burleson attended Sullivan College of Pharmacy's White Coat ceremony on January 9, 2009.

President Shely recognized Melinda Joyce representing the Advisory Council to report on the medication errors work of the Advisory Council. Dr. Joyce presented a power point presentation, Quality Assurance 101, that the Advisory Council is suggesting be used as an educational program for pharmacists. After the presentation, Dr. Policastri moved to accept Quality Assurance 101 as the educational program for Quality Assurance and move forward with presenting the program to as many pharmacists as possible throughout Kentucky. Mr. Thornbury seconded, and the motion passed unanimously. Educating the pharmacists of Kentucky is the first step, and then the Board will need to get feedback on the program to see what, if anything needs to be modified from the program. Once the program is satisfactory, then the Board will need to find legislative sponsors for the proposed statute in the 2010 legislative session. After all of that, then the Board can look at the process of dealing with medication errors and implement changes internally. Dr. Shely thanked the Advisory Council for all the hard work.

Dr. Policastri moved to approve the changes to the Advisory Council Report Re: Medication Errors, with the exception of Section 6 which is to be researched to determine if that is a typographical error. Ms. Simpson seconded, and the motion passed unanimously. This will be included in the final report from the Advisory Council for the Board to review after gathering feedback from the educational program, Quality Assurance 101.

Mr. Thornbury moved for each Board member to vote for nine people for the Advisory Council with the nine highest vote getters being appointed to the Advisory Council and then determine the length of term for each member once the make-up of the Council is set. Ms. Simpson seconded, and the motion passed unanimously. The Advisory Council members are: Tim Armstrong, Ralph Bouvette, Kim Croley, Trish Freeman, Jan Gould, Scott Greenwell, Brad Hall, Melinda Joyce, and Hugh Tran. Mr. Thornbury moved for the following terms: 4 year terms: Mr. Armstrong, Chair, Dr. Croley and Dr. Joyce; 3 year terms: Dr. Bouvette, Mr. Gould and Dr. Greenwell; and two year terms: Dr.

Freeman, Mr. Hall, and Dean Tran. Mr. Hadley seconded, and the motion passed unanimously.

Mr. Thornbury moved to appoint Dr. Policastri as the Board's representative on the Advanced Registered Nurse Practice Council. Mr. Hadley seconded, and the motion passed unanimously.

President Shely appointed Mr. Leake, Dr. Policastri and Ms. Simpson to serve on the Executive Director's evaluation committee.

Mr. Thornbury moved to have the November Board Meeting on November 13, 2009 and the Board Retreat one day only on November 14, 2009 from 8 a.m. to 5 p.m. at the Marriott in Northern Kentucky. Mr. Leake seconded, and the motion passed unanimously.

President Shely requested that the Board have a future discussion to consider statutory language that would allow pharmacists with lapsed Kentucky pharmacist's licenses to more easily get their licenses reinstated.

Board Members. Dr. Policastri. Dr. Policastri stated that she has been asked by NABP to serve as a representative to [AACP Task Force on Introductory Pharmacy Practice Experience \(IPPE\) Competencies](#) that will meet on February 3, 2009. Mr. Leake moved for approval for Dr. Policastri to attend the Task Force meeting. Mr. Thornbury seconded, and the motion passed unanimously.

Board Executive Director. 1) EMars monthly report for December 2008 was presented to the Board. 2) Ms. Simpson moved to fill the position left vacant after Jeff Osman's retirement as soon as possible. Dr. Policastri seconded, and the motion passed unanimously. 3) Mr. Leake moved that Dr. Shely be the Board's delegate and Dr. Policastri be the alternate delegate to the NABP Annual Meeting in May. Mr. Thornbury seconded, and the motion passed unanimously. 4) Mr. Thornbury moved to allow Mr. Burleson to travel to NABP in March to serve on the Advisory Committee for Examinations. Ms. Simpson seconded, and the motion passed unanimously. 5) Mr. Thornbury moved to accept the criteria for granting Continuing Education for attendance at Board Meetings. Ms. Simpson seconded, and the motion passed unanimously. 6) Mr. Burleson and Ms. Lalonde attended the Administrative Regulation Review Subcommittee meeting regarding 201 KAR 2:105 an amended Regulation regarding licensing and drug distribution requirements for Wholesale Distributors on January 13, 2009. The regulation was approved and will next be heard in the House and Senate Health and Welfare Committee in February.

PRN Committee. CAPTASA will be held January 23 and 24, 2009 in Lexington. Mr. Fingerson has been asked to present at APhA in Houston and at the Utah School for Alcoholism and Other Drug Dependencies.

CURRENT/PENDING CASES:

Case Updates: Dr. Policastri moved for acceptance and entry of the proposed Agreed Orders as written, excluding Case 07-0104. Mr. Leake seconded, and the motion passed unanimously.

Case No. 08-0071, Case No. 08-0083; Case No. 08-0098; and Case No. 08-0101.

Mr. Thornbury moved for acceptance and entry of the proposed Agreed Order for Case No. 07-0104 as written. Ms. Simpson seconded, and the motion passed unanimously, with Dr. Policastri recusing and leaving the room.

Case Review: President Shely stated that all cases from the Case Review Committee will continue to be kept anonymous from the Board. Ms. Lalonde explained that the anonymity in terms of licensees and permit holders protects the Board from liability issues and helps insure that the process is fairly pure in looking only at the facts of the case and that the Board will behave consistently by applying law based on similar cases and not based on an individual. This keeps the Board clear from claims of biases. If the case goes to a hearing then the Board will always know the identity of the individual(s) involved.

RECIPROCITY/RELICENSURE/INTERNSHIP:

Steve Wilson. Mr. Wilson is requesting permission to reciprocate to Kentucky from Mississippi. He lives in Mississippi and works at a mail order pharmacy in Mississippi but needs a Kentucky pharmacist's license. Mr. Wilson has been convicted of a felony, is under probation with the Mississippi Board of Pharmacy and is a member of the Mississippi Association of Recovering Pharmacists. Mr. Thornbury moved to allow Mr. Wilson to reciprocate to Kentucky with a signed KYPRN agreement that places him under the same terms as the Mississippi Board of Pharmacy's probation, ending March 21, 2012. Dr. Policastri seconded, and the motion passed unanimously.

CORRESPONDENCE/COMMUNICATIONS:

Jill Rhodes. Dr. Rhodes is opening a pharmacy with the purpose of billing cognitive pharmacy services rendered through medication therapy management. The pharmacy will not have a drug inventory. Dr. Rhodes requested an exemption from 201 KAR 2:180, 201 KAR 2:100 Sections 1, 2, 3, and 4 and 201 KAR 2:090 Sections 2 and 5. After discussion, Mr. Leake moved to grant Dr. Rhodes' request for an exemption from 201 KAR 2:090 Section 2 and ascertain a physical address where the computer will be located. 201 KAR 2:180 and 201 KAR 2:100 Sections 1, 2, 3, and 4 do not apply to this pharmacy, therefore, exemptions are not needed. Mr. Thornbury seconded, and the motion passed unanimously.

CONTINUING EDUCATION:

Mr. Leake moved to accept the continuing education programs 09-04 through 09-05 as recommended. Mr. Thornbury seconded, and the motion passed unanimously.

ADJOURNMENT: On motion by Mr. Thornbury, seconded by Ms. Simpson and passed unanimously, President Shely adjourned the meeting at 4:12 p.m. The next regularly scheduled Board Meeting is scheduled to begin at 9:00 a.m. on March 11, 2009 at Board Office in Lexington, Kentucky.

Michael Burleson, R.Ph.
Executive Director